No. 989, dated Simla, 23rd June 1877, which is the "basis on which the authority of certain public officers to make contracts" by order of the Government of their province, on behalf of the Secretary of State, rests.

Subsequently, another Resolution (Home Department), No. 23, dated Simla, 15th October 1878, was issued in the same sense, with reference to contracts by forest officers; but it stated that Conservators, Deputy Conservators, Assistant Conservators and Sub-Assistant Conservators might make contracts, to *such extent and within such limits* as each Local Government might, by notification in its official Gazette, direct.

The precise value and amount of contracts which each grade can execute must therefore be ascertained in each province, and it would be impossible here to reprint a collection of the orders that have been issued[3].

It will be observed that while these orders are in force, delegating the power of contracting, no *orders* have been issued *varying* "the form of execution" (in any other sense). Therefore it is important to observe the form required in the 22 and 23, Vic. cap. XLI, and for each document to be expressed that it is made by "so and so, Deputy Conservator (or Assistant Conservator, or as the case may be), by order of the Lieutenant-Governor (or Governor as the case may be), on behalf of the Secretary of State for India in Council." This form must never be omitted.

Section III.—Practical Remarks regarding Government Contracts.

§ 1.—*The Form.*

It will have been gathered from what I have previously said

plated by the Acts, and the only question was that of formal invalidity arising from the variation or absence of the proper form of words "by order of the Governor, &c., &c., on behalf of the Secretary of State."

[3] These powers are given by Government as regards the legal force of the contract; but there is nothing to prevent Conservators requiring all contracts above a certain value to be submitted to them before execution, in order to satisfy them that errors of drafting, &c., are not committed. It is an excellent plan to adopt this precaution.

that verbal contracts for nearly all the works or supplies a forest officer is likely to be concerned with, will be binding as far as their legality is concerned. But of course it is only in petty matters, regarding which there is no doubt, that word of mouth is thought sufficient. In all larger matters the contract will, as a matter of course, be reduced to writing.

I may now say a few words about the general form in which contracts are drawn up. It would not be useful, in a manual devoted to explaining principles, to give a set of forms even for the most frequently required contracts, such as contracts to fell and saw up, to float and deliver at depôt, timber of any kind, contracts for good service, security bonds, and so forth; but it will be better for each office gradually to provide itself with these, with the aid of the Government law officers of the province.

But I desire to make it perfectly clear that there is no magic or legal efficacy in any particular form. It is to secure neat and workmanlike documents that I recommend having standard forms.

The only matter of form that is essential is (I may repeat) that the contract *must* state that it is made by so and so *by order of the* Lieutenant-Governor or Governor or Chief Commissioner *on behalf* of the Secretary of State.

It isto be remembered that all the English law and practice of drafting deeds, much of which is matter of ancient and historical custom and growth of usages, has nothing to do with India[4].

In England, for example, there is an important distinction between contracts in simple writing and documents under seal which are "deeds." This latter practice of sealing might once have been a very important business, calculated to impress the parties and make an act so attested particularly binding. But now it has become a mere legal form, and the seal is only a red wafer stuck by the signature, on which, after signing in the presence of the witnesses, the person puts his finger saying "I acknowledge this as my act and deed."

[4] At any rate beyond the local limits of Presidency towns with which I am not concerned.

I have accordingly seen this form adopted in India, but it is quite unnecessary and should never be allowed in Government contracts[5].

§ 2.—*Signature of Attesting Witnesses.*

The signature of the forest officer or other officer empowered represents the Secretary of State's signature; that of the other party must be clearly affixed. If he cannot write, he must put his seal or his mark with his own hand, and underneath this is written, "the mark or seal of so and so." It is not *necessary* that each contracting party should sign on the same day. Each may sign in the presence of his witnesses when it is convenient.

It is not necessary that any particular number of witnesses should attest the signature, but if convenient it is as well to get two persons to the signature of each party. It is essential that the signature should be actually written in the presence of the witness or witnesses: it is not enough to sign the paper first, and then get witnesses to sign, telling them merely "this is my signature."

§ 3.—*Language used.*

In other respects[6], the only real requisite to a Government contract is that it should be quite clear and definite, and should express who the parties are, and that each has definitely assented to the contract. The terms should also set forth clearly what the *object*—the work to be done—is, and what the *consideration*—the payment

[5] This law seal has nothing to do with the impression of a signet being so often adopted by natives, which with them is not a seal in our sense, but a *signature* or *mark* when they cannot write.

[6] We have in India no legal distinction between "a deed," "an indenture," or any other form. It is really quite immaterial whether a contract begins, "Memorandum of an Agreement made this——day of————between——of the one part (hereinafter called the Contractor) and————Deputy Conservator of Forests, *by order of the Lieutenant-Governor of————on behalf of the Secretary of State for India in Council* (hereinafter called the Deputy Conservator), of the other part, or whether any other form is used. It is only a question of neatness and precision. Only it is essential that the words in italics should be used, and that again when the contract closes; it should be again repeated "in witness whereof the said——— contractor, and the said———Deputy Conservator (by order of the Lieutenant-Governor of———on behalf of the Secretary of State for India in Council) have set their hands, this——day of————, &c."

or other return for the work done—is. These, and especially the latter, should always appear clearly on the face of the document. If a *time* is fixed, make it clear what the parties really intend about time, specifying also clearly the *place* at which delivery is to be made.

Make it quite clear if there is any agreement about the order in which either party is to fulfil his part,—whether money is to be paid first and work done thereafter, or work first and money payment after, or part work and part payment, whatever it is. If the work to be done has a number of conditions and terms or rules connected with it, it is convenient to append to the instrument a list of the terms or conditions, in the form of rules or numbered paragraphs. Then, in the body of the instrument it is necessary only to specify that the work (described generally) is to be carried out in accordance with the rules and conditions laid down in the "schedule hereto annexed."

Every probable requirement of the case should be specified, and as little necessity for implying conditions and terms as possible, should be left.

But there is no use in verbiage; and it is to be remembered that the long and cumbrous phrases and endless repetitions and reduplications of words which have become customary in English deeds, and have been retained in England owing to the natural conservative feeling of the legal profession, lend no legal solidity whatever to a contract deed in India, and are altogether unnecessary[7].

The one object is to put the matter so clearly that it will be impossible to find room for misinterpretation, or for raising doubt, or for escaping an obligation on any point which it was the intention of the parties to impose.

§ 4.—*Specification of Penalties.*

It should be borne in mind what was said about the effect of specifying *penalties* to be paid in case of breach of contract.

[7] The introduction of such redundant forms of expression, as well as the silly ceremony of putting red wafers on the documents and alluding to the contract as "sealed," as well as signed, should be steadily resisted.

But no doubt in cases where the damages are very difficult to ascertain, it is advisable to make it clear that under these circumstances of difficulty (which should be alluded to), the parties have agreed fully that in the event of a breach, such and such rates or sums of money should be recovered. The Court would be at liberty to examine the matter, but if the terms were properly explained, the chances are great that the Court would find the terms "reasonable" and decree them accordingly. Whenever the penalty (or the measure of damages) is mentioned, it should always be definite, a sum of money, a fixed rate per piece, &c.; no vague or general phrase should be allowed.

§ 5.—*Clauses referring to Settlement in a certain Court.*

Sometimes clauses are put into contracts, signifying that if there is a dispute, the matter shall be determined in some particular Court, and not otherwise. This is entirely useless and misleading. No such clause has the slightest force. You cannot oust the jurisdiction of any Court by any agreement whatever. If, under the Civil Procedure Code, a Court of Lahore, say, has local jurisdiction and is otherwise qualified, no agreement that the case is to be heard in Calcutta will have the slightest effect.

An agreement that if a dispute arise, arbitration shall be resorted to, would, as we have seen, be allowable, though such an agreement cannot be *specifically* enforced (on a suit for specific performance), but would only give rise on breach to an action for damages. (But see the provisions regarding arbitration in the Civil Procedure Code.)

§ 6.—*Language of Contract.*

The language (whether English or Vernacular) in which contracts are drawn up will depend on local orders. Large firms, who better understand English, or have English-speaking people about them, can be contracted with in English: but otherwise the contract should be in a language that the party with whom Government contracts can understand.